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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,293	02/12/2004	Carl Kaoru Sakamoto	700.002US01	5279

7590 02/06/2006

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EXAMINER
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FLANAGAN, BEVERLY MEINDL

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/777,293	<b>Applicant(s)</b> SAKAMOTO, CARL KAORU	
	<b>Examiner</b> Beverly M. Flanagan	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
 BEVERLY M. FLANAGAN  
 PRIMARY EXAMINER

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/12/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed February 12, 2004 has been made of record and the references cited therein have been considered by the examiner.

### ***Claim Objections***

Claims 3, 24 and 25 are objected to because of the following informalities: In claims 3, 24 and 25, "angel" should be --angle--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 recites the limitation "distal end" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim. Instead, "distal end" should be -- proximal end--

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-14, 16-22 and 24-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakamoto (U.S. Patent No. 6,095,972).

**In regard to claims 1, 2, 4, 13, 14, 18, 20-22, 24, 26, 27**, Sakamoto teaches a laryngoscope having a blade 10 with a main blade portion having a posterior surface, a distal end and a proximal end and a blade tip 12 extending from the distal end of the main blade portion (see Figure 2). Figures 2, 7 and 8 show that the blade tip 12 is flared wider in a first direction than a width of the main blade portion and can be positioned at a select, obtuse angle with respect to the posterior surface of the main blade portion (see Figure 19 and col. 5, lines 15-25). A blade body base 18 connects to the proximal end of blade 10 for attaching the blade to a handle 26 (see Figure 2). Figure 4 shows that the main blade portion proximate the proximal end does not extend below the bottom portion of the blade body base 18 and Figure 2 shows the main blade portion being received in a channel in the blade body base 18. **In regard to claims 3 and 25**, as broadly as claimed, the angle formed between the blade tip 12 and the main body portion in Figure 9 is about 165 degrees. **With further respect to claims 13, 22 and 27 and in regard to claims 5-8 and 16**, Figure 6 shows that the main body portion has a first displacement plate that extends generally at a perpendicular angle from the main blade portion and Figure 3 shows that the first displacement plate has a first cutout portion proximate the proximal end of the blade to allow clearance of a patient's top teeth and a second cutout portion approximate the distal end of the blade. **With further respect to claims 13, 22 and 27 and in regard to claims 10, 11, 17 and 19**, Figure 6 shows a second tongue displacement plate extending generally at a perpendicular

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angle from the first tongue displacement plate in a direction away from the main blade portion and in a direction that is opposite the first direction of the flared blade tip 12. **In regard to claims 9 and 12**, Figures 3 and 6 show that the first and second tongue displacement plates are adapted to work together and are generally flat in shape. **In regard to claims 28-31**, see col. 6, lines 12-32.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto (U.S. Patent No. 6,095,972) in view of Haase (U.S. Patent No. 5,993,383).

**In regard to claims 15 and 23**, Sakamoto is silent as to the first tongue displacement plate being of a length that is less than one half the length of the main blade portion. However, Haase discloses a similar laryngoscope comprised of a blade assembly 14 having wing sections 28 and 30 for the purpose of displacing and controlling the tongue during intubation (see Figure 3). Figure 3 shows that the wing sections 28 and 30 are less than one half of the length of the blade assembly 14. Haase thus demonstrates that tongue displacing portions or sections on a laryngoscope blade that are less than one half of the length of the blade are well known in the art.

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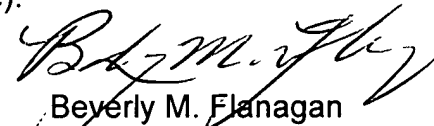
Furthermore, a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) as well as a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the first tongue displacement portion of Sakamoto less than one half of the length of the main blade portion 10, in the manner disclosed by Haase.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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